

ARTICLE VII

PROGRAM EQUIPMENT

7.1. Each Party may provide Program Equipment identified as being necessary for executing the Agreement to the other Party. Program Equipment shall remain the property of the providing Party. A list of all Program Equipment provided by one Party to another Party shall be developed and maintained by the PM, approved by the SC, and incorporated into the Task Plans in accordance with Annex A (Sample Task Plan).

7.2. The receiving Party shall maintain any such Program Equipment in good order, repair, and operable condition. Unless the providing Party has authorized the Program Equipment to be expended or otherwise consumed without reimbursement to the providing Party, the receiving Party shall return the Program Equipment to the providing Party in as good condition as received, normal wear and tear excepted, or return the Program Equipment and pay the cost to restore it. If the Program Equipment is damaged beyond economical repair, the receiving Party shall return the Program Equipment to the providing Party (unless otherwise specified in writing by the providing Party) and pay the replacement value, which shall be computed pursuant to the providing Party's national laws and regulations. If the Program Equipment is lost while in the custody of the receiving Party, the receiving Party shall issue a certificate of loss to the providing Party and pay the replacement value.

7.3. The providing Party shall deliver Program Equipment to the receiving Party at a mutually agreed location. Possession of the Program Equipment shall pass from the providing Party to the receiving Party at the time of receipt of the Program Equipment. Any further transportation is the responsibility of the receiving Party.

7.4. All Program Equipment that is transferred shall be used by the receiving Party only for the purposes of carrying out this Agreement, unless otherwise consented to in writing by the Government of the providing Party. In addition, in accordance with Article XII (Third Party Sales and Transfers), Program Equipment shall not be re-transferred to a Third Party without the prior written consent of the Government of the providing Party.

7.5. Program Equipment transferred to one Party under this Agreement shall be returned to the providing Party prior to the termination or expiration of this Agreement.

7.6. Any Program Equipment which is jointly acquired on behalf of both Parties for use under this Agreement shall be disposed of during the Program or when the Program ceases, as agreed by the SC.

7.7. Disposal of jointly acquired equipment may include a transfer of the interest of one Party in such Program Equipment to the other Party, or the sale of such equipment to a Third Party in accordance with Article XII (Third Party Sales and Transfers) of this Agreement. The Parties shall share the consideration from jointly acquired Program Equipment transferred or sold to a Third Party in the same ratio as costs are shared under this Agreement.

ARTICLE VIII

DISCLOSURE AND USE OF PROGRAM INFORMATION

8.1. General

- 8.1.1. Both Parties recognize that successful collaboration depends on full and prompt exchange of information necessary for carrying out the Program. The Parties intend to acquire sufficient Program Information and rights to use such information to enable the development of technology and prototype equipment. The nature and amount of Program Information to be acquired shall be consistent with the objectives stated in Article II (Objectives) and Article III (Scope of Work). Transfer of such information to Contractors shall be in accordance with each Party's applicable export control laws and export control regulations.

8.2. Government Program Foreground Information

- 8.2.1. Disclosure: All Program Foreground Information generated by a Party's military personnel or civilian employees shall be disclosed without charge to both Parties.
- 8.2.2. Use: Each Party may use or have used all Government Program Foreground Information without charge for Defense Purposes. The Party generating Government Program Foreground Information shall also retain its rights of use thereto. Any sale or other transfer to a Third Party, shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.

8.3. Government Program Background Information

- 8.3.1. Disclosure: Each Party, upon request, shall disclose without charge to the other Party any relevant Government Program Background Information generated by its military personnel or civilian employees, provided that:

- 8.3.1.1. Such Program Background Information is necessary to or useful in the Program, with the Party in possession of the information determining, after consulting with the requesting Party, whether it is "necessary to" or "useful in" the Program;
- 8.3.1.2. Such Program Background Information may be made available without incurring liability to holders of proprietary rights;
- 8.3.1.3. Disclosure is in accordance with national disclosure policies and regulations of the furnishing Party; and
- 8.3.1.4. Any disclosure or transfer of such Government Program Background Information to Contractors is in accordance with the furnishing Party's export control laws and export control regulations.
- 8.3.2. Use: Government Program Background Information furnished by one Party to the other may be used without charge by or for the other Party for Program Purposes only; however, the furnishing Party shall retain all its rights with respect to such Program Background Information.

8.4. Contractor Program Foreground Information

- 8.4.1. Disclosure: Program Foreground Information generated and delivered by Contractors shall be disclosed without charge to both Parties. Program Foreground Information generated by a Contractor, but not delivered, shall be made available upon the request of a Party at the cost of the Information's conversion into the prescribed form and the cost of reproduction and delivery as permitted in accordance with the terms of the applicable Contract. Such costs shall be borne by the requesting Party in accordance with Article V (Financial Provisions) paragraph 5.7. and shall not be considered a Program cost.
- 8.4.2. Use: Each Party may use or have used without charge for its Defense Purposes all Contractor

Program Foreground Information generated and delivered by Contractors of the other Party, including without limitation the results of any testing or evaluation resulting from Project Equipment or materiel loaned under this Agreement. The Party whose Contractors generate and deliver Contractor Program Foreground Information shall also retain its rights of use thereto in accordance with the applicable Contract(s). Any sale or other transfer to a Third Party of Contractor Program Foreground Information shall be subject to the provisions of Article XII (Third Party Sales and Transfers) of this Agreement.

8.5. Contractor Program Background Information

8.5.1. Disclosure: A Contracting Party shall make available to the other Party without charge all Program Background Information generated and delivered by Contractors which is delivered under Contracts awarded in accordance with this Agreement. Any other Program Background Information which is generated by Contractors under Contracts awarded outside of this Agreement and which is in the possession of one Party shall be made available without charge to the other Party upon its request, provided the following conditions are met:

- 8.5.1.1. Such Program Background Information is necessary to or useful in the Program, with the Party in possession of the information determining, after consultation with the other Party, whether it is "necessary to" or "useful in" the Program;
- 8.5.1.2. Such Program Background Information may be made available without incurring liability to holders of proprietary rights;
- 8.5.1.3. Disclosure is in accordance with national disclosure policies and regulations of the furnishing Party; and
- 8.5.1.4. Any disclosure or transfer of such Contractor Program Background Information to

Contractors is in accordance with the furnishing Party's export control laws and export control regulations.

8.5.2. Use: All Program Background Information delivered by Contractors under Contracts awarded in accordance with this Agreement may be used by or for a receiving Party without charge for Defense Purposes, subject to any restrictions by holders of proprietary rights other than the Parties. Any other Program Background Information furnished by one Party's Contractors and disclosed to the other Party may be used without charge by or for the other Party for Program Purposes, and may be subject to further restrictions by holders of proprietary rights; however, the furnishing Party shall retain all its rights with respect to such Program Background Information.

8.6. Alternative Uses of Program Information

8.6.1. The prior written consent of the Government of each Party shall be required for the use of Program Foreground Information for purposes other than those provided for in this Agreement.

8.6.2. Any Program Background Information provided by one Party shall be used by the other Party only for the purposes set forth in this Agreement, unless otherwise consented to in writing by the Government of the providing Party.

8.7. Proprietary Program Information

8.7.1. All Program Information subject to proprietary interests shall be identified and marked, and it shall be handled as Controlled Unclassified Information.

8.7.2. The provisions of the March 3, 1983 Industrial Security Annex to the General Security of Information Agreement between the Government of the United States and the Government of Israel, signed on March 19, 1979, General Security of Information Agreement effected by exchange of notes at Tel Aviv and Jerusalem of July 30 and

shall apply to proprietary Program Information related to this Agreement.

8.8. Patents

8.8.1. Each Party shall include in all its Contracts for the Program a provision governing the disposition of rights in regard to Program Inventions and Patent rights relating thereto, which either:

8.8.1.1. Provides that the Party shall hold title to all such Program Inventions together with the right to make Patent applications for the same, free of encumbrance from the Contractor concerned; or

8.8.1.2. Provides that the Contractor shall hold title (or may elect to retain title) for such Program Inventions together with the right to make Patent applications for the same, while securing for the Parties a license for the Program Inventions, and any Patents thereto, on terms in compliance with the provisions of paragraph 8.8.2 below.

8.8.2. In the event that a Contractor holds title (or elects to retain title) for any Program Invention, the Contracting Party shall secure for the other Party non-exclusive, irrevocable, royalty-free licenses under all Patents secured for that invention, to practice or have practiced the patented Program Invention for Defense Purposes.

8.8.3. The provisions of subparagraphs 8.8.4 through 8.8.8 below shall apply in regard to Patent rights for all Program Inventions made by the Party's military personnel or civilian employees, and for all Program Inventions made by Contractors for which the Contracting Party holds title or is entitled to acquire title.

8.8.4. Where a Party has or can secure the right to file a Patent application with regard to a Program Invention, that Party shall consult with the other Party regarding the filing of a Patent application for such Program Invention. The

Party which has or receives title to such Program Invention shall, in other countries, file, cause to be filed, or provide the other Party with the opportunity to file on behalf of the Party holding title, Patent applications covering that Program Invention. If a Party, having filed or caused to be filed a Patent application, decides to stop prosecution of the application or ceases to maintain a Patent which has been granted or issued on that application, that Party shall notify the other Party of that decision and permit the other Party to continue the prosecution, or maintain the Patent as the case may be.

8.8.5. Each Party shall be furnished with copies of the Patent applications filed and Patents granted with regard to Program Inventions.

8.8.6. Each Party shall grant to the other Party a non-exclusive, irrevocable, royalty-free license under its Patents for Program Inventions, to practice or have practiced the Program Inventions throughout the world for Defense Purposes.

8.8.7. Patent applications to be filed under this Agreement which contain Classified Information, shall be protected and safeguarded in accordance with the requirements contained in the Agreement Approving the Procedures for Reciprocal Filing of Classified Patent Applications in the U.S. and Israel, of July 10, 1959 and its Implementing Procedures.

8.8.8. Each Party shall notify the other Party of any Patent infringement claims made in its territory arising in the course of work performed under the Program. Insofar as possible, the other Party shall provide information available to it that may assist in defending the claim. Each Party shall be responsible for handling all Patent infringement claims made in its territory, and shall consult with the other Party during the handling, and prior to any settlement, of such claims. The Parties shall share the costs of resolving Patent infringement claims in the same percentage as they share the costs of the Program. The Parties shall, in accordance with their national laws and practices, give their authorization and consent for all use and manufacture in the course of work performed under the

Program of any invention covered by a Patent issued by their respective countries.

ARTICLE IX

CONTROLLED UNCLASSIFIED INFORMATION

9.1.: Except as otherwise provided in this Agreement or as authorized in writing by the Government of the originating Party, Controlled Unclassified Information provided or generated pursuant to this Agreement shall be controlled as follows:

- 9.1.1. Such information shall be used only for the purposes authorized for use of Program Information as specified in Article VIII (Disclosure and Use of Program Information).
- 9.1.2. Access to such information shall be limited to personnel whose access is necessary for the permitted use under subparagraph 9.1.1., and shall be subject to the provisions of Article XII (Third Party Sales and Transfers).
- 9.1.3. Each Party shall take all lawful steps, which may include national classification, available to it to keep such information free from further disclosure (including requests under any legislative provisions), except as provided in subparagraph 9.1.2., unless the Government of the originating Party consents to such disclosure. In the event of unauthorized disclosure, or if it becomes probable that the information may have to be further disclosed under any legislative provision, immediate notification shall be given to the originating Party.

9.2. To assist in providing the appropriate controls, the originating Party shall ensure that Controlled Unclassified Information is appropriately marked. The Parties shall decide, in advance and in writing, on the markings to be placed on the Controlled Unclassified Information. The appropriate markings shall be defined in the Program Security Instruction.

9.3. Controlled Unclassified Information provided or generated pursuant to this Agreement shall be handled in a manner that ensures control as provided for in paragraph 9.1.

9.4. Prior to authorizing the release of Controlled Unclassified Information to Contractors, the Parties shall

ensure the Contractors are legally bound to control such information in accordance with the provisions of this Article.

ARTICLE X

VISITS TO ESTABLISHMENTS

10.1. Each Party shall permit visits to its government establishments, agencies and laboratories, and Contractor industrial facilities by employees of the other Party or by employees of the other Party's Contractor(s), provided that the visit is authorized by both Parties and the employees have any necessary and appropriate security clearances and a need-to-know.

10.2. All visiting personnel shall be required to comply with security regulations of the hosting Party. Any information disclosed or made available to visitors shall be treated as if supplied to the Party sponsoring the visiting personnel, and shall be subject to the provisions of this Agreement.

10.3. Requests for visits by personnel of one Party to a facility of the other Party shall be coordinated through official channels, and shall conform with the established visit procedures of the host country. Requests for visits shall bear the name of the Program.

10.4. Lists of personnel of each Party required to visit, on a continuing basis, facilities of the other Party shall be submitted through official channels in accordance with recurring international visit procedures.

ARTICLE XI

SECURITY

11.1. All Classified Information and materiel provided or generated pursuant to this Agreement shall be stored, handled, transmitted, and safeguarded in accordance with the General Security of Information Agreement between the Government of the United States and the Government of Israel, dated 10 December 1982, and including the Industrial Security Annex thereto, of 3 March 1983.

11.2. Classified Information shall be transferred only through official government-to-government channels or through channels approved by the Designated Security Authorities (DSAs) of the Parties. Such Classified Information shall bear the level of classification, denote the country of origin, the conditions of release, and the fact that the information relates to this Agreement.

11.3. Each Party shall take all lawful steps available to it to ensure that Classified Information provided or generated pursuant to this Agreement is protected from further disclosure, except as permitted by paragraph 11.8., unless the other Party consents to such disclosure. Accordingly, each Party shall ensure that:

11.3.1. The recipient shall not release the Classified Information to any government, national, organization, or other entity of a Third Party except as permitted under the procedures set forth in Article XII (Third Party Sales and Transfers).

11.3.2. The recipient shall not use the Classified Information for other than the purposes provided for in this A.

11.3.3. The recipient shall comply with any distribution and access restrictions on information that is provided under this Agreement.

11.4. The Parties shall investigate all cases in which it is known or where there are grounds for suspecting that Classified Information provided or generated pursuant to this Agreement has been lost or disclosed to unauthorized persons. Each Party also

shall promptly and fully inform the other Party of the details of any such occurrences, and of the final results of the investigation and of the corrective action taken to preclude recurrences.

11.5. The PMs shall prepare a Program Security Instruction (PSI) and a Classification Guide (CG) for the Program. The PSI and the CG shall describe the methods by which Program Information and shall be classified, marked, used, transmitted, and safeguarded. The PSI and CG shall be developed by the PMs within three months after this Agreement enters into force. They shall be reviewed and forwarded to the Parties' DSAs for approval and shall be applicable to all government and Contractor personnel participating in the Program. The CG shall be subject to regular review and revision with the aim of downgrading the classification whenever this is appropriate. The PSI and the CG shall be approved by the appropriate DSA prior to the transfer of any Classified Information or Controlled Unclassified Information.

11.6. The DSA of the Party in which a classified Contract is awarded will assume responsibility for administering within its territory security measures for the protection of the Classified Information, in accordance with its laws and regulations. Prior to the release to a Contractor, prospective Contractor, or Subcontractor of any Classified Information received under this Agreement, the DSAs will:

11.6.1. Ensure that such Contractor, prospective Contractor or Subcontractor and their facility(ies) have the capability to protect the Classified Information adequately.

11.6.2. Grant a security clearance to the facility(ies), if appropriate.

11.6.3. Grant a security clearance for all personnel whose duties require access to Classified Information, if appropriate.

11.6.4. Ensure that all persons having access to the Classified Information are informed of their responsibilities to protect the Classified Information in accordance with national security laws and regulations, and provisions of this Agreement.

11.6.5. Carry out periodic security inspections of cleared facilities to ensure that the Classified Information is properly protected.

11.6.6. Ensure that access to the Classified Information is limited to those persons who have a need-to-know for purposes of the Agreement.

11.7. Contractors, prospective Contractors, or subcontractors which are determined by DSAs to be under financial, administrative, policy or management control of nationals or entities of a Third Party, may participate in a Contract or subcontract requiring access to Classified Information provided or generated pursuant to this Agreement only when enforceable measures are in effect to ensure that nationals or other entities of a Third Party shall not have access to Classified Information or controlled Unclassified Information. If enforceable measures are not in effect to preclude access by nationals or other entities of a Third Party, the Government of the other Party shall be consulted for approval prior to permitting such access.

11.8. For any facility wherein Classified Information is to be used, the responsible Party or Contractor shall approve the appointment of a person or persons to exercise effectively the responsibilities for safeguarding at such facility the information pertaining to this Agreement. These officials shall be responsible for limiting access to Classified Information involved in this Agreement to those persons who have been properly approved for access and have a need-to-know.

11.9. Each Party shall ensure that access to the Classified Information is limited to those persons who possess requisite security clearances and have a specific need for access to the Classified Information in order to participate in the Program.

11.10. Information provided or generated pursuant to this Agreement may be classified as high as secret. The existence of this Agreement is unclassified and the contents are unclassified.

ARTICLE XII

THIRD PARTY SALES AND TRANSFERS

12.1. The Parties shall not sell, transfer title to, disclose, or transfer possession of Program Foreground Information, jointly acquired Program Equipment, or any item produced either wholly or in part from Program Foreground Information to any Third Party without the prior written consent of the other Party's government. Furthermore, neither Party shall permit any such sale, disclosure, or transfer, including by the owner of the item, without the prior written consent of the other Party's government. Such consent shall not be given unless the government of the intended recipient confirms in writing that it shall:

12.1.1. not retransfer, or permit the further retransfer of, any equipment or information provided; and

12.1.2. use, or permit the use of, the equipment or information provided only for the purposes specified by the Parties.

12.2. A Party shall not sell, transfer title to, disclose, or transfer possession of Program Equipment or Program Background Information provided by the other Party to any Third Party without the prior written consent of the government of the Party which provided such equipment or information. The providing Party's government shall be solely responsible for authorizing such transfers and, as applicable, specifying the method and conditions for implementing such transfers.

12.3. Consent for Third Party sales and transfers of Project Foreground Information, jointly acquired Program Equipment, or any item produced either wholly or in part from Program Foreground Information shall be subject to foreign policy, national security considerations, and national laws, regulations, and policies. Approval by a Party's government of the proposed sale or transfer by the other Party's government to a Third Party will take into account its willingness to sell or transfer such equipment or information to the same Third Party.

ARTICLE XIII

LIABILITY AND CLAIMS

13.1. For liability arising out of, or in connection with, activities undertaken in the performance of official duty in the execution and for the benefit of the Program, the following provisions shall apply.

13.2. With the exception of claims for loss of, or damage to, Program Equipment under Article VII (Program Equipment), each Party waives all claims against the other Party for injury to, or death of, its military or civilian personnel, and for damage to, or loss of, its property (including jointly acquired property) caused by such personnel (which do not include Program Contractors) of that other Party. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's personnel, the costs of any liability shall be borne by that Party alone.

13.3. Claims from any other persons for injury, death, damage, or loss of any kind caused by one Party's personnel shall be processed by the appropriate Party, as determined by the Parties. Any costs determined to be owed the claimant shall be borne by the Parties in the same percentages as they share the costs of the Program. If, however, such injury, death, damage, or loss results from reckless acts or reckless omissions, willful misconduct or gross negligence of a Party's personnel, the costs of any liability shall be borne by that Party alone.

13.4. If a person or other entity, other than the Parties (including their personnel), damages jointly acquired property of the Parties, and the cost of making good such damage is not recoverable from such person or entity, such cost shall be borne by the Parties in the same percentages as they share the costs of the Program.

13.5. Claims arising under any Contract awarded pursuant to Article VI (Contracting Provisions) shall be resolved in accordance with the provisions of the Contract.